

House Bill 1582

By: Representatives Gardner of the 57th and Buckner of the 130th

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 37 of the Official Code of Georgia Annotated, relating to mental health, so
2 as to authorize a competent adult to execute a declaration to appoint an agent to make mental
3 health care decisions on behalf of such person; to provide a short title; to provide definitions;
4 to provide for standards and limitations with respect to mental health care declarations; to
5 provide for the responsibilities and duties of mental health care providers and agents under
6 mental health care declarations; to provide a statutory declaration for mental health care
7 form; to provide for construction of such form; to provide for applicability; to provide for
8 construction of chapter; to provide for related matters; to repeal conflicting laws; and for
9 other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Title 37 of the Official Code of Georgia Annotated, relating to mental health, is amended by
13 adding a new chapter to the end of such title to read as follows:

14 "CHAPTER 11

15 37-11-1.

16 This chapter shall be known and may be cited as the 'Declaration for Mental Health Care
17 Act.'

18 37-11-2.

19 As used in this chapter, the term:

20 (1) 'Attending physician' means the physician who has primary responsibility at the time
21 of reference for the treatment and care of the patient.

22 (2) 'Declarant' means the person executing a declaration pursuant to this chapter.

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1 (3) 'Declaration' means an agency governing any type of mental health care for and on
2 behalf of a patient and refers to the power of attorney or other written instrument defining
3 the agency, or the agency itself, as appropriate to the context.

4 (4) 'Hospital' means:

5 (A) A facility which has a valid permit or provisional permit issued under Chapter 7
6 of Title 31 and which is primarily engaged in providing to inpatients, by or under the
7 supervision of physicians, diagnostic services and therapeutic services for medical
8 diagnosis, treatment, and care of injured, disabled, or sick persons; and

9 (B) A state owned or state operated facility providing services which include, but are
10 not limited to, inpatient care and the diagnosis, care, and treatment or habilitation of
11 persons with:

12 (i) Mental or emotional illness;

13 (ii) Developmental disability, as defined in Code Section 37-2-2; or

14 (iii) Addictive disease, as defined in Code Section 37-2-2.

15 Such hospital may also provide or manage state owned or operated programs in the
16 community.

17 (5) 'Incapable' means that, in the opinion of the court in a guardianship proceeding or in
18 the opinion of two physicians, a person's ability to receive and evaluate information
19 effectively or communicate decisions is impaired to such an extent that the person
20 currently lacks the capacity to make mental health care decisions.

21 (6) 'Mental health care' means any care, treatment, service, or procedure to maintain,
22 diagnose, treat, or provide for the patient's mental health.

23 (7) 'Mental health care provider' or 'provider' means the attending physician and any
24 other person administering mental health care to the patient at the time of reference who
25 is licensed, certified, or otherwise authorized or permitted by law to administer mental
26 health care in the ordinary course of business or the practice of a profession, including
27 any person employed by or acting for any such authorized person.

28 (8) 'Patient' means the declarant.

29 (9) 'Physician' means a person licensed to practice medicine under Article 2 of Chapter
30 34 of Title 43.

31 (10) 'Skilled nursing facility' means a facility which has a valid permit or provisional
32 permit issued under Chapter 7 of Title 31 and which provides skilled nursing care and
33 supportive care to patients whose primary need is for availability of skilled nursing care
34 on an extended basis.

1 37-11-3.

2 (a) An adult who is not incapable may make a declaration of preferences or instructions
3 regarding his or her mental health care. The declaration may include, but is not limited to,
4 consent to or refusal of specified mental health care.

5 (b) A declaration for mental health care shall designate a capable adult to act as agent to
6 make decisions about mental health care for the declarant. An alternative agent may also
7 be designated to act as agent if the original designee is unable or unwilling to act at any
8 time. An agent who has accepted the appointment in writing may make decisions about
9 mental health care on behalf of the declarant only when the declarant is incapable. The
10 decisions shall be consistent with any instructions or desires the declarant has expressed
11 in the declaration.

12 (c) A declaration shall be effective only if it is signed by the declarant and two capable
13 adult witnesses. The witnesses shall attest that the declarant is known to them, signed the
14 declaration in their presence, appears to be of sound mind, and is not under duress, fraud,
15 or undue influence. Persons specified in subsection (f) of Code Section 37-11-4 may not
16 act as witnesses.

17 (d) A declaration shall become operative when it is delivered to the declarant's physician
18 or other mental health care provider and remains valid until it expires pursuant to
19 subsection (f) of this Code section or is revoked by the declarant. The physician or
20 provider shall be authorized to act in accordance with an operative declaration when the
21 declarant has been found to be incapable. The physician or provider shall continue to
22 obtain the declarant's informed consent to all mental health care decisions if the declarant
23 is capable of providing informed consent or refusal.

24 (e)(1) An agent shall not have authority to make mental health care decisions unless the
25 declarant is incapable.

26 (2) An agent shall not be, solely as a result of acting in that capacity, personally liable
27 for the cost of treatment provided to the declarant.

28 (3) Except to the extent that a right is limited by a declaration or by any federal law, an
29 agent shall have the same right as the declarant to receive information regarding the
30 proposed mental health care and to receive, review, and consent to disclosure of medical
31 records relating to that care. This right of access shall not waive any evidentiary
32 privilege.

33 (4) In exercising authority under the declaration, the agent shall act consistently with the
34 instructions and desires of the declarant, as expressed in the declaration. If the
35 declarant's desires are unknown, the agent shall act in what he or she, in good faith,
36 believes to be in the best interest of the declarant.

(5) An agent shall not be subject to criminal prosecution, civil liability, or professional disciplinary action for any action taken in good faith pursuant to a declaration for mental health care.

(f)(1) A declaration for mental health care shall remain effective for a period of three years unless otherwise provided in the declaration, or until revoked by the declarant. If a declaration for mental health care has been invoked and is in effect at the expiration of three years after its execution, the declaration shall remain effective until the declarant is no longer incapable.

(2) The authority of a named agent and any alternative agent shall continue in effect as long as the declaration appointing the agent is in effect or until the agent has withdrawn.

(g) A person may not be required to execute or to refrain from executing a declaration as a criterion for insurance, as a condition for receiving mental or physical health care services, or as a condition of discharge from a hospital or skilled nursing facility.

37-11-4.

(a) Upon being presented with a declaration, a physician shall make the declaration a part of the declarant's medical record. When acting under authority of a declaration, a physician shall comply with it to the fullest extent possible, consistent with reasonable medical practice, the availability of treatments requested, and applicable law. If the physician or other provider is unwilling at any time to comply with the declaration, the physician or provider shall promptly notify the declarant and the agent and document the notification in the declarant's medical record.

(b) A physician or provider may subject a declarant to intrusive treatment in a manner contrary to the declarant's wishes, as expressed in a declaration for mental health care, if:

(1) The declarant has been committed to the custody of a local mental health authority; or

(2) In cases of emergency endangering life or health.

(c) A declaration shall not limit any authority to take a person into custody or admit or retain a person in the custody of a local mental health authority.

(d) A declaration may be revoked in whole or in part by the declarant at any time so long as the declarant is not incapable. Such revocation shall be effective when the declarant communicates the revocation to the attending physician or other provider. The attending physician or other provider shall note the revocation as part of the declarant's medical record.

(e) A physician who administers or does not administer mental health care according to and in good faith reliance upon the validity of a declaration shall not be subject to criminal prosecution, civil liability, or professional disciplinary action resulting from a subsequent finding that a declaration is invalid.

(f) None of the following persons may serve as an agent or as witnesses to the signing of a declaration:

(1) The declarant's attending physician or mental health care provider or an employee of that physician or provider;

(2) An employee of the Department of Human Resources; or

(3) An employee of a local mental health authority or any organization that contracts with a local mental health authority.

(g) An agent may withdraw by giving notice to the declarant. If a declarant is incapable, the agent may withdraw by giving notice to the attending physician or provider. The attending physician shall note the withdrawal as part of the declarant's medical record.

37-11-5.

(a) The statutory declaration for mental health care form contained in this subsection may be used to grant an agent powers with respect to the declarant's own mental health care; but the statutory mental health care declaration is not intended to be exclusive or to cover delegation of a parent's power to control the mental health care of a minor child, and no provision of this chapter shall be construed to bar use by the declarant of any other or different form of declaration or power of attorney for mental health care that complies with Code Section 37-11-4. If a different form of declaration is used, it may contain any or all of the provisions set forth or referred to in the following form. When a declaration in substantially the following form is used, and notice substantially similar to that contained in the form below has been provided to the patient, it shall have the same meaning and effect as prescribed in this chapter. Substantially similar forms may include forms from other states. The statutory mental health care declaration may be included in or combined with any other form of declaration governing property or other matters and no provision of this chapter shall be construed to bar use by the declarant of a durable power of attorney for health care form pursuant to Chapter 36 of Title 31, either solely or in addition to the form contained in this subsection:

'GEORGIA STATUTORY DECLARATION FOR MENTAL HEALTH CARE FORM'

NOTICE: THE PURPOSE OF THIS DECLARATION IS TO GIVE THE PERSON YOU DESIGNATE (YOUR AGENT) BROAD POWERS TO MAKE MENTAL HEALTH CARE DECISIONS FOR YOU, INCLUDING POWER TO REQUIRE, CONSENT TO, OR WITHDRAW ANY TYPE OF PERSONAL CARE OR MEDICAL TREATMENT FOR ANY MENTAL CONDITION AND TO ADMIT YOU TO OR DISCHARGE YOU FROM ANY HOSPITAL, HOME, OR OTHER INSTITUTION; BUT NOT INCLUDING PSYCHOSURGERY, STERILIZATION, OR INVOLUNTARY HOSPITALIZATION OR TREATMENT COVERED BY TITLE 37 OF THE OFFICIAL CODE OF GEORGIA ANNOTATED. THIS FORM DOES NOT IMPOSE A DUTY ON YOUR AGENT TO EXERCISE GRANTED POWERS; BUT, WHEN A POWER IS EXERCISED, YOUR AGENT WILL HAVE TO USE DUE CARE TO ACT FOR YOUR BENEFIT AND IN ACCORDANCE WITH THIS FORM. A COURT CAN TAKE AWAY THE POWERS OF YOUR AGENT IF IT FINDS THE AGENT IS NOT ACTING PROPERLY. YOU MAY NAME COAGENTS AND SUCCESSOR AGENTS UNDER THIS FORM, BUT YOU MAY NOT NAME A MENTAL HEALTH CARE PROVIDER WHO MAY BE DIRECTLY OR INDIRECTLY INVOLVED IN RENDERING MENTAL HEALTH CARE TO YOU UNDER THIS DECLARATION. UNLESS YOU EXPRESSLY LIMIT THE DURATION OF THIS DECLARATION IN THE MANNER PROVIDED BELOW OR UNTIL YOU REVOKE THIS DECLARATION OR A COURT ACTING ON YOUR BEHALF TERMINATES IT, THIS DECLARATION SHALL BE EFFECTIVE FOR THREE YEARS, EVEN AFTER YOU BECOME DISABLED, INCAPACITATED, OR INCOMPETENT. THE POWERS YOU GIVE YOUR AGENT, YOUR RIGHT TO REVOKE THOSE POWERS, AND THE PENALTIES FOR VIOLATING THE LAW ARE EXPLAINED MORE FULLY IN CODE SECTIONS 37-11-3 AND 37-11-4 OF THE GEORGIA "DECLARATION FOR MENTAL HEALTH CARE ACT" OF WHICH THIS FORM IS A PART (SEE THE BACK OF THIS FORM). THAT ACT EXPRESSLY PERMITS THE USE OF ANY DIFFERENT FORM OF POWER OF ATTORNEY YOU MAY DESIRE. IF THERE IS ANYTHING ABOUT THIS FORM THAT YOU DO NOT UNDERSTAND, YOU SHOULD ASK A LAWYER TO EXPLAIN IT TO YOU.

DURABLE POWER OF ATTORNEY made this _____ day of _____, ____.

1. I, _____

(insert name and address of declarant)

hereby appoint _____ (insert name and address of agent)

as my attorney in fact (my agent) to act for me and in my name in any way I could act in person to make any and all decisions for me concerning my mental health care, including medical treatment and hospitalization as it relates to my mental health care and to require, withhold, or withdraw any type of medical treatment. My agent shall have the same access to my medical records that I have, including the right to disclose the contents to others. This authority shall include serving as my personal representative and all rights that I have under the federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), P.L. 104-191, and its implementing regulations regarding the use and disclosure of my individually identifiable health information and other medical records.

THE ABOVE GRANT OF POWER IS INTENDED TO BE AS BROAD AS POSSIBLE SO THAT YOUR AGENT WILL HAVE AUTHORITY TO MAKE ANY DECISION YOU COULD MAKE TO OBTAIN OR TERMINATE ANY TYPE OF MENTAL HEALTH CARE, IF YOUR AGENT BELIEVES SUCH ACTION WOULD BE CONSISTENT WITH YOUR INTENT AND DESIRES. IF YOU WISH TO LIMIT THE SCOPE OF YOUR AGENT'S POWERS OR PRESCRIBE SPECIAL RULES TO LIMIT THE POWER, YOU MAY DO SO IN THE FOLLOWING PARAGRAPHS.

2. The powers granted above shall not include the following powers or shall be subject to the following rules or limitations (here you may include any specific limitations you deem appropriate, such as instructions to refuse any specific types of treatment that are inconsistent with your religious beliefs or unacceptable to you for any other reason, such as electroconvulsive therapy):

The following indicates separate details with regard to my mental health care:

Name: _____

Clinicians

The names of my doctors, therapists, pharmacists, and service providers and their telephone numbers are:

<u>Name</u>	<u>Phone #</u>
_____	_____
_____	_____

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9 I prefer treatment from the following clinicians:

10 Name

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18 I refuse treatment from the following clinicians:

19 Name

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27 Medications

28 The medications I am currently using and why:

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8 I prefer to take the following medications if additional medications become necessary and

9 why I prefer them:

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15 I cannot tolerate the following medications and why:

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21 I am allergic to the following medications:

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28 Hospitalization is not my first choice

29 This is my plan so I can stay at home or in the community.

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7 Treatment Facilities

8 If it became necessary for me to be hospitalized I would prefer to be treated at the following

9 facilities:

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14 I do not wish to be treated at the following facilities:

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19 Acceptable interventions: (Please place your initials in the blanks)

20 Options:

21 Medication in pill form	Yes _____	No _____
22 Liquid medication	Yes _____	No _____
23 Medication by injection	Yes _____	No _____
24 Seclusion	Yes _____	No _____
25 Physical restraints	Yes _____	No _____
26 Seclusion and physical restraints	Yes _____	No _____
27 Experimental treatment	Yes _____	No _____
28 ECT	Yes _____	No _____

29 _____ I consent to the administration of electroconvulsive therapy with the following

30 conditions:

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Preferred interventions:

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1 THIS DECLARATION MAY BE AMENDED OR REVOKED BY YOU AT ANY
2 TIME AND IN ANY MANNER WHILE YOU ARE ABLE TO DO SO. IN THE
3 ABSENCE OF AN AMENDMENT OR REVOCATION, THE AUTHORITY
4 GRANTED IN THIS DECLARATION WILL BECOME EFFECTIVE AT THE TIME
5 IT IS SIGNED AND WILL CONTINUE IN EFFECT FOR THREE YEARS, UNLESS
6 A LIMITATION ON THE BEGINNING DATE OR DURATION IS MADE BY
7 INITIALING AND COMPLETING EITHER OR BOTH OF THE FOLLOWING:

8 3. () This declaration shall become effective on _____ (insert
9 a future date or event during your lifetime, such as court determination of your
10 disability, incapacity, or incompetency, when you want this power to first take effect).

11 4. () This declaration shall terminate on _____ (insert a future
12 date or event, such as court determination of your disability, incapacity, or
13 incompetency, when you want this power to terminate prior to your death).

14 IF YOU WISH TO NAME SUCCESSOR AGENTS, INSERT THE NAMES AND
15 ADDRESSES OF SUCH SUCCESSORS IN THE FOLLOWING PARAGRAPH:

16 5. If any agent named by me shall die, become legally disabled, incapacitated, or
17 incompetent, or resign, refuse to act, or be unavailable, I name the following (each to
18 act successively in the order named) as successors to such agent:

19 _____
20 _____

21 IF YOU WISH TO NAME A GUARDIAN OF YOUR PERSON IN THE EVENT A
22 COURT DECIDES THAT ONE SHOULD BE APPOINTED, YOU MAY, BUT ARE
23 NOT REQUIRED TO, DO SO BY INSERTING THE NAME OF SUCH GUARDIAN
24 IN THE FOLLOWING PARAGRAPH. THE COURT WILL APPOINT THE PERSON
25 NOMINATED BY YOU IF THE COURT FINDS THAT SUCH APPOINTMENT
26 WILL SERVE YOUR BEST INTERESTS AND WELFARE. YOU MAY, BUT ARE
27 NOT REQUIRED TO, NOMINATE AS YOUR GUARDIAN THE SAME PERSON
28 NAMED IN THIS FORM AS YOUR AGENT.

29 6. If a guardian of my person is to be appointed, I nominate the following to serve as
30 such guardian:

31 _____ (insert name and address of nominated guardian of the person)

32 7. INITIAL ONE:

33 A. I have previously signed a durable power of attorney for:

34 ____ Mental health care only;

35 ____ Physical health care only; or

36 ____ Mental and physical health care;

I want it to remain in effect in addition to this document, except in instances where the previous power of attorney and this document conflict. In such a conflict, this document shall prevail.

Initialed _____

B. I have previously signed a declaration or durable power of attorney for mental health care, and I HEREBY REVOKE IT.

Initialed _____

C. I DO NOT have a previously signed durable power of attorney for mental health care.

Initialed _____

8. I am fully informed as to all the contents of this form and understand the full import of this grant of powers to my agent.

Signed _____

(Declarant)

The declarant has had an opportunity to read the above form and has signed the above form in our presence. We, the undersigned, each being over 18 years of age, witness the declarant's signature at the request and in the presence of the declarant, and in the presence of each other, on the day and year above set out.

Witnesses:

Addresses:

Additional witness required when mental health care agency is signed in a hospital or skilled nursing facility.

I hereby witness this mental health care agency and attest that I believe the declarant to be of sound mind and to have made this mental health care agency willingly and voluntarily.

Witness: _____

1 Attending Physician

2 Address: _____

3 _____

4 YOU MAY, BUT ARE NOT REQUIRED TO, REQUEST YOUR AGENT AND

5 SUCCESSOR AGENTS TO PROVIDE SPECIMEN SIGNATURES BELOW. IF YOU

6 INCLUDE SPECIMEN SIGNATURES IN THIS POWER OF ATTORNEY, YOU

7 MUST COMPLETE THE CERTIFICATION OPPOSITE THE SIGNATURES OF THE

8 AGENTS.

9		I certify that the
10		signature of my agent
11	Specimen signatures of	and successor(s) is
12	agent and successor(s)	correct.
13	_____	_____
14	(Agent)	(Declarant)
15	_____	_____
16	(Successor agent)	(Declarant)
17	_____	_____
18	(Successor agent)	(Declarant)'

19 (b) The foregoing statutory declaration for mental health care form authorizes, and any

20 different form of mental health care agency may authorize, the agent to make any and all

21 mental health care decisions on behalf of the declarant which the declarant could make if

22 present and under no disability, incapacity, or incompetency, subject to any limitations on

23 the granted powers that appear on the face of the form, to be exercised in such manner as

24 the agent deems consistent with the intent and desires of the declarant. The agent will be

25 under no duty to exercise granted powers or to assume control of or responsibility for the

26 declarant's mental health care; but, when granted powers are exercised, the agent will be

27 required to use due care to act for the benefit of the declarant in accordance with the terms

28 of the statutory mental health care power and will be liable for negligent exercise. The

29 agent may act in person or through others reasonably employed by the agent for that

30 purpose but may not delegate authority to make mental health care decisions. The agent

31 may sign and deliver all instruments, negotiate and enter into all agreements, and do all

32 other acts reasonably necessary to implement the exercise of the powers granted to the

33 agent. Without limiting the generality of the foregoing, the statutory mental health care

34 declaration form shall, and any different form of mental health care agency may, include

35 the following powers, subject to any limitations appearing on the face of the form:

1 (1) The agent is authorized to consent to and authorize or refuse, or to withhold or
2 withdraw consent to, any and all types of medical care, treatment, or procedures relating
3 to the mental health of the declarant, including any medication program, but not including
4 psychosurgery, sterilization, or involuntary hospitalization or treatment covered by this
5 title;

6 (2) The agent is authorized to admit the declarant to or discharge the declarant from any
7 and all types of hospitals, institutions, homes, residential or nursing facilities, treatment
8 centers, and other health care institutions providing mental health care or treatment for
9 any type of mental condition, but not including psychosurgery, sterilization, or
10 involuntary hospitalization or treatment covered by this title;

11 (3) The agent is authorized to contract for any and all types of mental health care services
12 and facilities in the name of and on behalf of the declarant and to bind the declarant to
13 pay for all such services and facilities, and the agent shall not be personally liable for any
14 services or care contracted for on behalf of the declarant; and

15 (4) At the declarant's expense and subject to reasonable rules of the mental health care
16 provider to prevent disruption of the declarant's mental health care, the agent shall have
17 the same right the declarant has to examine and copy and consent to disclosure of all the
18 declarant's medical records that the agent deems relevant to the exercise of the agent's
19 powers, whether the records relate to mental health or any other medical condition and
20 whether they are in the possession of or maintained by any physician, psychiatrist,
21 psychologist, therapist, hospital, skilled nursing facility, or other health care provider,
22 notwithstanding the provisions of any statute or other rule of law to the contrary. This
23 authority shall include all rights that the declarant has under the federal Health Insurance
24 Portability and Accountability Act of 1996 ("HIPAA"), P.L. 104-191, and its
25 implementing regulations regarding the use and disclosure of individually identifiable
26 health information and other medical records.

27 37-11-6.

28 (a) This chapter applies to all mental health care providers and other persons in relation
29 to all mental health care agencies or declarations executed on and after July 1, 2006. This
30 chapter supersedes all other provisions of law or parts thereof existing on July 1, 2006, to
31 the extent such other provisions are inconsistent with the terms and operation of this
32 chapter, provided that this chapter does not affect the provisions of law governing
33 emergency health care. If the declarant has executed a durable power of attorney for health
34 care pursuant to Chapter 36 of Title 31, as now or hereafter amended, the declarant shall
35 indicate within either document which is to take precedence with regard to mental health

1 care decisions. Furthermore, unless the declaration provides otherwise, the agent who is
2 known to the mental health care provider to be available and willing to make mental health
3 care decisions for the patient has priority over any other person, including any guardian of
4 the person, to act for the patient in all matters covered by the declaration.

5 (b) This chapter does not in any way affect or invalidate any declaration executed or any
6 act of an agent prior to July 1, 2006, or affect any claim, right, or remedy that accrued prior
7 to July 1, 2006.

8 (c) This chapter is wholly independent of the provisions of Title 53, relating to wills,
9 trusts, and the administration of estates, and nothing in this chapter shall be construed to
10 affect in any way the provisions of said Title 53."

11 **SECTION 2.**

12 All laws and parts of laws in conflict with this Act are repealed.